

HOUSE BILL No. 6383

September 24, 2002, Introduced by Rep. Meyer and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 20, 20a, 21, 21a, and 36 of chapter VIII
(MCL 768.20, 768.20a, 768.21, 768.21a, and 768.36), section 20a
of chapter VIII as amended by 1983 PA 42, section 21a of
chapter VIII as amended by 1994 PA 56, and section 36 of
chapter VIII as amended by 2002 PA 245.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VIII

Sec. 20. (1) If a defendant in a ~~felony~~ CRIMINAL case
proposes to offer in his OR HER defense testimony to establish an
alibi at the time of the alleged offense, the defendant shall at
the time of arraignment on the information or within 15 days
after that arraignment but not less than 10 days before the trial
of the case, or at such other time as the court directs, file and

1 serve upon the prosecuting attorney a notice in writing of his OR
2 HER intention to claim that defense. IF A JUVENILE FACING TRIAL
3 FOR AN OFFENSE THAT WOULD BE A CRIME IF COMMITTED BY AN ADULT
4 PROPOSES TO OFFER IN HIS OR HER DEFENSE TESTIMONY TO ESTABLISH AN
5 ALIBI AT THE TIME OF THE ALLEGED OFFENSE, THE JUVENILE SHALL AT
6 THE TIME OF PRELIMINARY HEARING ON THE PETITION OR WITHIN 15 DAYS
7 AFTER THAT HEARING, BUT NOT LESS THAN 10 DAYS BEFORE THE TRIAL OF
8 THE CASE, OR AT SUCH OTHER TIME AS THE COURT DIRECTS, FILE AND
9 SERVE UPON THE PROSECUTING ATTORNEY A NOTICE IN WRITING OF HIS OR
10 HER INTENTION TO CLAIM THAT DEFENSE. The notice shall contain, as
11 particularly as is known to the defendant or the defendant's
12 attorney OR THE JUVENILE OR THE JUVENILE'S ATTORNEY, the names of
13 witnesses to be called in behalf of the defendant OR JUVENILE to
14 establish that defense. The ~~defendant's~~ notice shall include
15 specific information as to the place at which the ~~accused~~
16 DEFENDANT OR JUVENILE claims to have been at the time of the
17 alleged offense.

18 (2) Within 10 days after the receipt of the ~~defendant's~~
19 notice REQUIRED UNDER SUBSECTION (1) but not later than 5 days
20 before the trial of the case, or at such other time as the court
21 may direct, the prosecuting attorney shall file and serve upon
22 the defendant OR JUVENILE a notice of rebuttal ~~which shall~~
23 ~~contain~~ THAT CONTAINS, as particularly as is known to the prose-
24 cuting attorney, the names of the witnesses whom the prosecuting
25 attorney proposes to call in rebuttal to controvert the
26 ~~defendant's~~ ALIBI defense at the trial of the case.

(3) ~~Both the~~ THE defendant, THE JUVENILE, and the prosecuting attorney ~~shall be~~ ARE under a continuing duty to disclose promptly the names of additional witnesses ~~which~~ THAT come to ~~the~~ THEIR attention ~~of either party~~ subsequent to filing their respective notices as provided in this section.

Upon motion with notice to the other party and upon a showing by the moving party that the name of an additional witness was not available when the notice required by subsections (1) or (2) was filed and could not have been available by the exercise of due diligence, the additional witness may be called by the moving party to testify as a witness for the purpose of establishing or rebutting an alibi defense.

(4) AS USED IN THIS SECTION, "JUVENILE" MEANS AN INDIVIDUAL WHO IS WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF THE CIRCUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2.

Sec. 20a. (1) If a defendant in a ~~felony~~ CRIMINAL case OR A JUVENILE FACING TRIAL FOR AN OFFENSE THAT WOULD BE A CRIME IF COMMITTED BY AN ADULT proposes to offer in his or her defense testimony to establish his or her insanity at the time of an alleged offense, the defendant OR JUVENILE shall file and serve upon the court and the prosecuting attorney a notice in writing of his or her intention to assert the defense of insanity not less than 30 days before the date set for the trial of the case, or at such other time as the court directs.

(2) Upon receipt of a notice of an intention to assert the defense of insanity, a court shall order the defendant OR

1 JUVENILE to undergo an examination relating to his or her claim
2 of insanity by personnel of the center for forensic psychiatry or
3 by other qualified personnel, as applicable, for a period not to
4 exceed 60 days from the date of the order. ~~When~~ IF the
5 defendant OR JUVENILE is to be held in jail OR DETENTION pending
6 trial, the center or the other qualified personnel may perform
7 the examination in the jail OR AT THE JUVENILE DETENTION
8 FACILITY, or may notify the sheriff to transport the defendant OR
9 JUVENILE to the center or facility used by the qualified person-
10 nel for the examination, and the sheriff shall return the
11 defendant to the jail OR THE JUVENILE TO THE JUVENILE DETENTION
12 FACILITY upon completion of the examination. ~~When~~ IF the
13 defendant OR JUVENILE is at liberty pending trial, on bail or
14 otherwise, the defendant OR JUVENILE shall make himself or her-
15 self available for the examination at the place and time estab-
16 lished by the center or the other qualified personnel. If the
17 defendant OR JUVENILE, after being notified of the place and time
18 of the examination, fails to make himself or herself available
19 for the examination, the court may, without a hearing, order his
20 or her commitment to the center.

21 (3) The defendant OR JUVENILE may, at his or her own
22 expense, or if indigent, at the expense of the county, secure an
23 independent psychiatric evaluation by a clinician of his or her
24 choice on the issue of his or her insanity at the time the
25 alleged offense was committed. The defendant OR JUVENILE shall
26 notify the prosecuting attorney at least 5 days before the day
27 scheduled for the independent evaluation that he or she intends

1 to secure such an evaluation. The prosecuting attorney may
2 similarly obtain independent psychiatric evaluation. A clinician
3 secured by an indigent defendant ~~shall be~~ OR JUVENILE IS enti-
4 tled to receive a reasonable fee as approved by the court.

5 (4) The defendant OR JUVENILE shall fully cooperate in his
6 or her examination by ~~personnel of~~ the center for forensic
7 ~~psychiatry~~ PSYCHIATRY'S PERSONNEL or by other qualified person-
8 nel, and by any other independent examiners for the ~~defense and~~
9 ~~prosecution~~ DEFENDANT, THE JUVENILE, OR THE PROSECUTOR. If he
10 or she fails to cooperate, and that failure is established to the
11 satisfaction of the court at a hearing prior to trial, the
12 defendant OR JUVENILE shall be barred from presenting testimony
13 relating to his or her insanity at the trial of the case.

14 (5) Statements made by the defendant OR JUVENILE to
15 ~~personnel of~~ the center for forensic ~~psychiatry~~ PSYCHIATRY'S
16 PERSONNEL, to other qualified personnel, or to any independent
17 examiner during an examination ~~shall~~ IS not ~~be~~ admissible
18 ~~or~~ AND DOES NOT have probative value in court at the trial of
19 the case on any issues other than his or her mental illness or
20 insanity at the time of the alleged offense.

21 (6) Upon conclusion of the examination, the center for
22 forensic psychiatry, ~~or the~~ other qualified personnel, ~~and~~
23 ~~any~~ OR independent examiner ~~—~~ shall prepare a written report
24 and shall submit the report to the prosecuting attorney and
25 ~~defense~~ counsel FOR THE DEFENDANT OR THE JUVENILE. The report
26 shall contain ALL OF THE FOLLOWING:

1 (a) The clinical findings of the center, the qualified
2 personnel, or ~~any~~ independent examiner.

3 (b) The facts, in reasonable detail, upon which the findings
4 were based.

5 (c) The ~~opinion of the center or~~ CENTER'S, qualified
6 ~~personnel~~ PERSONNEL'S, ~~and~~ OR the independent ~~examiner~~
7 EXAMINER'S OPINION on the issue of the defendant's OR JUVENILE'S
8 insanity at the time the alleged offense was committed and
9 whether the defendant OR JUVENILE was mentally ill or mentally
10 retarded at the time the alleged offense was committed.

11 (7) Within 10 days after the receipt of the report from the
12 center for forensic psychiatry or from the qualified personnel,
13 or within 10 days after the receipt of the report of an indepen-
14 dent examiner secured by the prosecution, whichever occurs later,
15 but not later than 5 days before the trial of the case, or at
16 such other time as the court directs, the prosecuting attorney
17 shall file and serve upon the defendant OR JUVENILE a notice of
18 rebuttal of the defense of insanity ~~which~~ THAT shall contain
19 the names of the witnesses whom the prosecuting attorney proposes
20 to call in rebuttal.

21 (8) The report of the center for forensic psychiatry, ~~the~~
22 qualified personnel, or ~~any~~ independent examiner may be admis-
23 sible in evidence upon the stipulation of the ~~prosecution and~~
24 ~~defense~~ PARTIES.

25 (9) As used in this section: ~~,"qualified personnel" means~~
26 ~~either of the following: (a) Personnel~~

(A) "JUVENILE" MEANS AN INDIVIDUAL WHO IS WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF THE CIRCUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2.

(B) "QUALIFIED PERSONNEL" MEANS PERSONNEL meeting standards determined by the department of ~~mental~~ COMMUNITY health under rules promulgated ~~pursuant to Act No. 306 of the Public Acts of 1969, being sections 24.301 to 24.315 of the Michigan Compiled Laws~~ UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

~~(b) Until the rules to which subdivision (a) refers, excluding emergency rules, are in effect, personnel of the psychiatric clinic of the recorder's court of the city of Detroit.~~

Sec. 21. (1) If the defendant OR JUVENILE fails to file and serve the written notice prescribed in section 20 or 20a OF THIS CHAPTER, the court shall exclude evidence offered by the defendant OR JUVENILE for the purpose of establishing an alibi or ~~the insanity of the defendant~~ DEFENSE. If the notice given by the defendant OR JUVENILE does not state, as particularly as is known to the defendant or the defendant's attorney OR THE JUVENILE OR THE JUVENILE'S ATTORNEY, the name of a witness to be called in behalf of the defendant OR JUVENILE to establish a defense specified in section 20 or 20a OF THIS CHAPTER, the court shall exclude the WITNESS testimony ~~of a witness which is~~ offered by the defendant OR JUVENILE for the purpose of establishing that defense.

1 (2) If the prosecuting attorney fails to file and serve a
2 notice of rebuttal upon the defendant OR JUVENILE as provided in
3 section 20 or 20a OF THIS CHAPTER, the court shall exclude evi-
4 dence offered by the prosecution in rebuttal to the defendant's
5 OR JUVENILE'S evidence relevant to a defense specified in
6 section 20 or 20a OF THIS CHAPTER. If the notice given by the
7 prosecuting attorney does not state, as particularly as is known
8 to the prosecuting attorney, the WITNESS'S name ~~of a witness~~ to
9 be called ~~in rebuttal of the defense of~~ TO REBUT THE alibi or
10 insanity DEFENSE, the court shall exclude the WITNESS testimony
11 ~~of a witness which is~~ offered by the prosecuting attorney for
12 the purpose of rebutting that defense.

13 (3) AS USED IN THIS SECTION, "JUVENILE" MEANS AN INDIVIDUAL
14 WHO IS WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF THE CIR-
15 CUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIA OF THE PROBATE
16 CODE OF 1939, 1939 PA 288, MCL 712A.2.

17 Sec. 21a. (1) It is an affirmative defense to a prosecution
18 for a criminal offense OR FOR AN OFFENSE COMMITTED BY A JUVENILE
19 THAT WOULD BE A CRIME IF COMMITTED BY AN ADULT that the defendant
20 OR JUVENILE was legally insane when he or she committed the acts
21 constituting the offense. An individual is legally insane if, as
22 a result of mental illness OR OF BEING MENTALLY RETARDED as THOSE
23 TERMS ARE defined in section ~~400a of the mental health code, Act~~
24 ~~No. 258 of the Public Acts of 1974, being section 330.1400a of~~
25 ~~the Michigan Compiled Laws, or as a result of being mentally~~
26 ~~retarded as defined in section 500(h) of the mental health code,~~
27 ~~Act No. 258 of the Public Acts of 1974, being section 330.1500 of~~

1 ~~the Michigan Compiled Laws~~ 1001A OF THE MENTAL HEALTH CODE, 1974
2 PA 258, MCL 330.2001A, that ~~person~~ INDIVIDUAL lacks substantial
3 capacity either to appreciate the nature and quality or the
4 wrongfulness of his or her conduct or to conform his or her con-
5 duct to the requirements of the law. Mental illness or being
6 mentally retarded does not otherwise constitute a defense of
7 legal insanity.

8 (2) An individual who was under the influence of voluntarily
9 consumed or injected alcohol or controlled substances at the time
10 of his or her alleged offense is not considered to have been
11 legally insane solely because of being under the influence of the
12 alcohol or controlled substances.

13 (3) The defendant OR JUVENILE has the burden of proving the
14 defense of insanity by a preponderance of the evidence.

15 (4) AS USED IN THIS SECTION, "JUVENILE" MEANS AN INDIVIDUAL
16 WHO IS WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF THE CIR-
17 CUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIA OF THE PROBATE
18 CODE OF 1939, 1939 PA 288, MCL 712A.2.

19 Sec. 36. (1) If the defendant OR JUVENILE asserts a defense
20 of insanity in compliance with section 20a of this chapter, the
21 defendant may be found "guilty but mentally ill" OR THE JUVENILE
22 MAY BE FOUND "RESPONSIBLE BUT MENTALLY ILL" if, after trial, the
23 trier of fact finds all of the following:

24 (a) The defendant is guilty beyond a reasonable doubt of an
25 offense OR THE JUVENILE IS RESPONSIBLE FOR AN OFFENSE THAT WOULD
26 BE A CRIME IF COMMITTED BY AN ADULT.

1 (b) The defendant OR JUVENILE has proven by a preponderance
2 of the evidence that he or she was mentally ill at the time of
3 the commission of that offense.

4 (c) The defendant OR JUVENILE has not established by a pre-
5 ponderance of the evidence that he or she lacked the substantial
6 capacity either to appreciate the nature and quality or the
7 wrongfulness of his or her conduct or to conform his or her con-
8 duct to the requirements of the law.

9 (2) If the defendant OR JUVENILE asserts a defense of insan-
10 ity in compliance with section 20a of this chapter and the
11 defendant OR JUVENILE waives his or her right to trial, by jury
12 or by judge, the trial judge, with the approval of the prosecut-
13 ing attorney, may accept a plea of guilty but mentally ill OR
14 RESPONSIBLE BUT MENTALLY ILL in lieu of a plea of guilty, A PLEA
15 OF RESPONSIBLE, or a plea of nolo contendere. The judge shall
16 not accept a plea of guilty but mentally ill OR RESPONSIBLE BUT
17 MENTALLY ILL until, with the defendant's OR JUVENILE'S consent,
18 the judge has examined the report or reports prepared in compli-
19 ance with section 20a of this chapter, the judge has held a hear-
20 ing on the issue of the defendant's OR JUVENILE'S mental illness
21 at which either party may present evidence, and the judge is sat-
22 isfied that the defendant OR JUVENILE has proven by a preponder-
23 ance of the evidence that the defendant OR JUVENILE was mentally
24 ill at the time of the offense to which the plea is entered. The
25 reports shall be made a part of the record of the case.

26 (3) If a defendant OR JUVENILE is found guilty but mentally
27 ill OR RESPONSIBLE BUT MENTALLY ILL or enters a plea to that

1 effect ~~which~~ THAT is accepted by the court, the court shall
2 impose any sentence that could be imposed by law upon a defendant
3 who is convicted of the same offense OR UPON A JUVENILE FOUND
4 RESPONSIBLE FOR THE SAME OFFENSE. IF THE JUVENILE IS COMMITTED
5 TO THE CUSTODY OF THE FAMILY INDEPENDENCE AGENCY OR TO A JUVENILE
6 FACILITY, THE JUVENILE SHALL UNDERGO FURTHER EVALUATION AND BE
7 GIVEN SUCH TREATMENT AS IS PSYCHIATRICALY INDICATED FOR THE
8 JUVENILE'S MENTAL ILLNESS OR RETARDATION. If the defendant is
9 committed to the custody of the department of corrections, the
10 defendant shall undergo further evaluation and be given such
11 treatment as is psychiatrically indicated for his or her mental
12 illness or retardation. Treatment may be provided by the depart-
13 ment of corrections or by the department of community health as
14 provided by law. Sections 1004 and 1006 of the mental health
15 code, 1974 PA 258, MCL 330.2004 and 330.2006, apply to the dis-
16 charge of the defendant from a facility of the department of com-
17 munity health to which the defendant has been admitted and to the
18 return of the defendant to the department of corrections for the
19 balance of the defendant's sentence. When a treating facility
20 designated by either the department of corrections or the depart-
21 ment of community health discharges the defendant before the
22 expiration of the defendant's sentence, that treating facility
23 shall transmit to the parole board a report on the condition of
24 the defendant that contains the clinical facts, the diagnosis,
25 the course of treatment, the prognosis for the remission of symp-
26 toms, the potential for recidivism, the danger of the defendant
27 to himself or herself or to the public, and recommendations for

1 future treatment. If the parole board considers the defendant
2 for parole, the board shall consult with the treating facility at
3 which the defendant is being treated or from which the defendant
4 has been discharged and a comparable report on the condition of
5 the defendant shall be filed with the board. If the defendant is
6 placed on parole, the defendant's treatment shall, upon recommen-
7 dation of the treating facility, be made a condition of parole.
8 Failure to continue treatment except by agreement with the desig-
9 nated facility and parole board is grounds for revocation of
10 parole.

11 (4) If a defendant who is found guilty but mentally ill OR A
12 JUVENILE WHO IS RESPONSIBLE FOR AN OFFENSE THAT WOULD BE A CRIME
13 IF COMMITTED BY AN ADULT is placed on probation under the juris-
14 diction of the sentencing court as provided by law, the trial
15 judge, upon recommendation of the center for forensic psychiatry,
16 shall make treatment a condition of probation. Reports as speci-
17 fied by the trial judge shall be filed with the probation officer
18 and the sentencing court. Failure to continue treatment, except
19 by agreement with the treating agency and the sentencing court,
20 is grounds for revocation of probation. The period of probation
21 FOR A DEFENDANT shall not be for less than 5 years and shall not
22 be shortened without receipt and consideration of a forensic psy-
23 chiatric report by the sentencing court. THE PERIOD OF PROBATION
24 FOR A JUVENILE SHALL EXTEND TO THE JUVENILE'S TWENTY-FIRST
25 BIRTHDAY. THE PERIOD OF PROBATION FOR A JUVENILE SHALL NOT BE
26 SHORTENED WITHOUT RECEIPT AND CONSIDERATION OF A FORENSIC
27 PSYCHIATRIC REPORT BY THE SENTENCING COURT. Treatment shall be

1 provided by an agency of the department of community health or,
2 with the approval of the sentencing court and at individual
3 expense, by private agencies, private physicians, or other mental
4 health personnel. A psychiatric report shall be filed with the
5 probation officer and the sentencing court every 3 months during
6 the period of probation. If a motion on a petition to discon-
7 tinue probation is made by the defendant OR JUVENILE, the proba-
8 tion officer shall request a report as specified from the center
9 for forensic psychiatry or ~~any~~ other facility certified by THE
10 department of community health for the performance of forensic
11 psychiatric evaluation.

12 (5) AS USED IN THIS SECTION, "JUVENILE" MEANS AN INDIVIDUAL
13 WHO IS WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF THE CIR-
14 CUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIA OF THE PROBATE
15 CODE OF 1939, 1939 PA 288, MCL 712A.2.

16 Enacting section 1. This amendatory act does not take
17 effect unless all of the following bills of the 91st Legislature
18 are enacted into law:

19 (a) Senate Bill No. _____ or House Bill No. 6381
20 (request no. 07064'02).

21 (b) Senate Bill No. _____ or House Bill No. 6382
22 (request no. 07065'02).